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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 17 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996)
)
Telecommunications Carriers' Use of)
Customer Proprietary Network Information)
and Other Customer Information)

CC Docket No. 96-115

FURTHER COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
AND THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELEPHONE COMPANIES

The National Telephone Cooperative Association ("NTCA") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") submit these Further Comments in response to the Common Carrier Bureau request for Further Comment on Specific Questions (Public Notice DA 97-385). The Bureau asks that commenters address questions in the order presented in the notice and restate and highlight each question above their responses. Inasmuch as most of the questions relate to the interpretation of Sections 271 and 272 of the Telecommunications Act of 1996 and Bell Operating Company ("BOCs") obligations under these provisions, the Associations' comments are limited to the two questions that pertain to independent companies' obligations.

Question 3

If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), must carriers, including interexchange carriers and independent local exchange carriers (LECs), treat their affiliates and other intra-company operating units (such as those that originate interexchange telecommunications services in areas where the carriers provide telephone

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exchange service and exchange access) as third parties for which customers' affirmative requests must be secured before CPNI can be disclosed? Must the answer to this question be the same as the answer to question 2.

The answer to this question need not be the same as the answer to question 2 which relates to the nondiscrimination provisions imposed on the BOCs by section 272(c)(1). Sections 271 and 272 of the Act unambiguously impose no obligations on telecommunications carriers that are not BOCs. The Commission has no authority to extend the nondiscrimination provisions of section 272(c) to LECs that originate interexchange telecommunications services in areas where they provide telephone exchange service and exchange access. Section 222 is the only authority that governs LEC obligations with respect to disclosure of customer CPNI to third parties. Section 222 (c)(2) governs what individual customer specific information a carrier may disclose to third parties while Section 222(c)(1) governs how a carrier may use this individual information to provide telecommunications services. These provisions do not require the Commission to rule that small LECs must treat their affiliates as third parties that must obtain written approval before they obtain individual customer specific information.

Even if the law permitted it, the Commission should not adopt a rigid rule requiring small LECs to require written approval for disclosure to affiliates and intra-company operating units before disclosing CPNI. A rule imposing this requirement on small LECs would be extremely difficult to monitor and comply within a small company environment. It would also impose undue burdens on small companies by requiring them to set up elaborate systems to secure information that would ordinarily be accessible to employees that perform multiple tasks in small companies with affiliated operations. The imposition of such a rule would involve complicated

arrangements and ensure no appreciable public benefits since the customer base of small LECs is so small and third parties have the right to aggregate CPNI.

Question 5

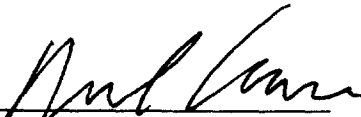
If sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must each carrier, including interexchange carriers and independent LECs disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with their affiliates and other intra-company operating units.

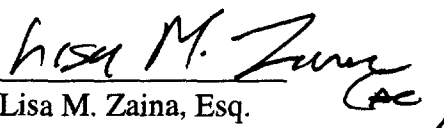
The fact that Section 222(c)(1) permits the telecommunications carrier providing the service to use CPNI without written approval does not mandate that the carrier permit disclosure to unaffiliated entities under the same standard as is permitted with its affiliates and other intra-company operating units. The Commission cannot read into Section 222(c)(1) a nondiscrimination requirement that Congress has not written. The intent of Congress with respect to individual customer information is made clear from its treatment of aggregate information. Thus Section 222(c)(3) which governs the confidentiality of that information does contain nondiscrimination provisions. Under section 222(c)(3), “[a] local exchange carrier may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1) [pertaining to a carrier’s right to use information in its provision of telecommunications service from which CPNI information is derived or services necessary to the provision of the service] only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.” This provision makes it clear that Congress knew how to and did provide for nondiscriminatory safeguards in providing for competitor access to aggregate customer information but chose not to in the case of individual customer information.


What is also clear from Congress' different treatment of individual customer information is that its principal concern was in protecting the customer's expectation of privacy rather than promoting the competition's interest in gaining access to the private records in the hands of the LEC. The statute thus provides for written approval by the customer before a carrier turns over individual information to others with whom the customer has no relationship whatsoever. On the other hand, where the customer already has a relationship with the carrier and the carrier has individual information as a result of that relationship, Congress could legitimately make a distinction and permit carriers to use the information without further permission in the provision of telecommunications services and with further approval which need not be written for other purposes.

Respectfully submitted,

NTCA and OPASTCO

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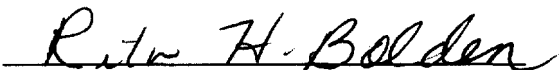
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March 17, 1997

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Further Comments of the National Telephone Cooperative Association and Organization for the Promotion and Advancement of Small Telephone Companies in CC Docket No. 96-115 was served on this 17th day of March 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


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